

► SPECIAL EDITION

The 122nd First Regular and First Special Legislative Session

The following legislative summaries are not meant to explain the full complexity of these enacted bills. While we have attempted to include those bills that impact the Maine Insurance Code, this listing is not intended to be all inclusive. Readers interested in complete information on enacted laws may contact the state's Engrossing Division at (207) 287-1324 or (207) 287-1689 to request a copy of the law. You may also visit the legislature's Web site for other information on bills this last session. A digest of enacted laws can be found at www.state.me.us/legis/opla/enactlaw.htm, while the full text of the enacted laws for the first regular session of the 121st Legislature can be found at <http://janus.state.me.us/legis/ros/lom/LOM121st/LOM121Directory.htm>.

Unless specifically stated in the summary, laws became effective September 17, 2005.

L.D. 33 (Resolve Chapter 115) - *Resolve, Regarding Legislative Review of Chapter 101: Establishment of the Capital Investment Fund, a Major Substantive Rule of the Governor's Office of Health Policy and Finance* - Changes the annual process of establishing the Capital Investment Fund to allow the GOHPF to convene an ad hoc panel of experts, and to provide for a public hearing before the Fund's dollar amount is finalized.

L.D. 122 (Resolve Chapter 100) - *Resolve, Regarding Uninsured Motorist Coverage in Automobile Insurance Policies* - Requires the Bureau of Insurance to consult with interested persons and study the legal and policy issues regarding uninsured motorist (UM) coverage. At a minimum, the study must include discussion of:

- current law regarding UM coverage,
- the decision in *Butterfield v. Norfolk and Dedham Mut. Fire Ins. Co.*, 2004 ME 124, and
- related activity in the motor vehicle insurance market since *Butterfield*.

The Bureau must submit a report of its study to the Joint Standing Committee on Insurance and Financial Services by December 5, 2005. The report must include recommendations and any suggested legislation.

L.D. 238 (Public Law Chapter 49) - *Amend the Insurance Code Regarding Discontinuance of a Line of Business* - This law amends Title 24-A M.R.S.A. § 2916-C to allow the Superintendent of Insurance to authorize discontinuance of a line of business if the insurer demonstrates that substantially similar coverage is available in the admitted market. Previously, an insurer was required to demonstrate availability of replacement coverage at the same or lower rates.

L.D. 237 (Public Law Chapter 50) - *Establish a Minimum Amount for Required Interest Payments by Insurers* - Requires the Superintendent to adopt rules that establish a minimum amount of interest payable on an overdue undisputed claim to a health care provider before a payment must be issued.

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L.D. 239 (Resolve Chapter 33) - Create a *Hospital Program for Young Women with Eating Disorders* - Directs the Commissioner of Health and Human Services, the Maine Hospital Association and the Superintendent of Insurance, in consultation with several hospitals throughout the State, to develop a plan to create a partnership between the State and hospitals throughout the State to identify and treat eating disorders in young women. A report on the plan must be submitted to the Second Regular Session of the 122nd Legislature.

L.D. 311(Public Law Chapter 101) - Prohibit Steering in *Automobile Insurance* - Amends Title 24-A M.R.S.A. § 2164-C to regulate the relationship between auto insurers and auto repair shops in the same manner as it does the relationship between auto insurers and auto glass shops. An insurer may not require that appraisals or repairs of collision damage be made or not made in a specified shop. In addition, an insurer may not recommend a particular shop without disclosing that the claimant is under no obligation to utilize that shop. A Bulletin on this provision will be issued by the Bureau of Insurance by November 1, 2005.

L.D. 346 (Public Law Chapter 98) - Amend *Group Insurance Funding Requirements* - Changed Title 39-A M.R.S.A. §403 (C)(3) to add certain language related to confidence level funding requirements. The change allows self-insurers, that have maintained an actuarially determined fully funded trust for a period of 10 or more consecutive years, to seek the Superintendent's approval to cash fund all plan years at the 65% confidence level. This alternative may not be available to all self-insurers and will be based on the financial condition of the self-insurer. The Superintendent

will begin to accept written requests for approval to fund all plan years at the 65% confidence level on September 17, 2005.

L.D. 376 (Public Law Chapter 43) - Enhance *Uniformity of Insurance Producer Licensing* - This bill eliminates a biennial licensee continuation fee from the "independent producer" authority; now, no producer licensing categories will be subject to such a fee. It also eliminates the limited license for the sale of annuities which is no longer needed due to other available licenses, and it provides that insurance producer continuing education credit requirements may be reduced from the current 30 credit hours through rulemaking in order to provide the flexibility to remain consistent with national uniformity standards.

L.D. 385 (Public Law Chapter 398) - Limit the *Liability of Ambulance Services in Maine* - A non profit incorporated ambulance service or nontransporting emergency medical service and a for profit incorporated ambulance service or nontransporting emergency medical service is covered by the Maine Tort Claims Act. An ambulance service may not be required to procure liability insurance that exceeds the liability limits of the Maine Liability Claims Tort Act (generally \$400,000) and an insurer providing insurance to an ambulance service may not require coverage that exceeds the liability of the Maine Tort Claims Act.

L.D. 408 (Public Law Chapter 42) - Limit *Recovery of Disability Benefits Subject to Offset* - This law affects those disability policies that allow a reduction in disability benefits based on other income received by the claimant during a period of disability. In the event of overpayment of disability income benefits to the

insured, the insurer is limited to an offset recovery rate of 20% against current payments to the insured. This offset recovery rate applies in those instances where the insurer has not adequately notified the insured of the offset provision contained in the contract, or where the insurer has overpaid benefits as a result of a calculation error. The law applies only to policies applied for after September 13, 2003 and to claims filed after January 1, 2006.

L.D. 409 (Public Law Chapter 41) - Clarify the *Superintendent of Insurance's Authority to Assess Civil Penalties* - Amends Title 24-A M.R.S.A. Sec. 12-A, the general civil penalty provision of the Insurance Code. Removes the requirement that the Superintendent of Insurance provide the Attorney General 90 days notice and the opportunity to bring an action in Superior Court before the Superintendent can proceed with an administrative action. The new provisions require the Superintendent to provide the Attorney General with notice of any adjudicatory hearing which might result in a civil penalty and likewise requires the Attorney General to notify the Superintendent at least 7 days prior to the hearing if the Attorney General elects to pursue the action in Superior Court. The purpose of the law is to facilitate the efficient conduct of enforcement actions by the Superintendent.

L.D. 416 (Public Law Chapter 97) - Amend the *Laws Regarding Submission of Health Insurance Claims* - This law requires that, with the exception of emergency room and pathology services, health insurance claims for professional services be submitted on the standard federal form used by noninstitutional providers and suppliers to bill for Medicare Part B covered services, also known as the "CMS 1500"

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form, published by the Centers for Medicare and Medicaid Services.

L.D. 505 (Public Law Chapter 312) - Relating to the Northern New England Passenger Rail Authority - If one or more passenger rail service providers are protected by a liability insurance policy covering liability for bodily injury, personal injury, death and property damage from rail incidents or accidents involving passenger trains, and the policy limits are not less than \$75 million per occurrence annually and in aggregate, each passenger rail service provider protected by the insurance is not liable in excess of the coverage limits of the liability policy for all claims. The legislation makes other changes not related to insurance coverage or liability.

L.D. 528 (Public Law Chapter 95) - Exempt Insurers of Commercial Vehicle Fleets from the Requirement of Notification to the Secretary of State When Insurance is Cancelled - Amends Title 29-A M.R.S.A. § 1604-A sub-§6 to exempt a commercial auto insurer from notifying the Secretary of State when a policy covering a fleet of three or more vehicles is cancelled, terminated or lapsed.

L.D. 541 (Public Law Chapter 114) - Amend the Laws Related to Cancellation and Nonrenewal of Insurance - The law amends the Standard Fire Policy subchapter, Automobile Insurance Cancellation Control Act and Property Insurance Cancellation Control Act to exempt from the non-renewal requirements of these statutes the transfer of a policy to an affiliate of the insurer. These statutes generally cover homeowners and private passenger automobile policies. The law does not affect policies subject to section 2908, such as commercial auto, general liability, personal or

commercial umbrella, professional liability. Therefore, insurers may not transfer to their affiliates policies to which section 2908 applies.

L.D. 581 (Public Law Chapter 243) - Regarding Identity Theft Deterrence - A new provision has been added to the consumer credit laws authorizing consumers to obtain security freezes on their credit reports. Pursuant to 10 M.R.S.A. § 1313-C, documented victims of identity theft are entitled to get this service for free, while others may be charged a fee not to exceed \$10. In general, a frozen report may only be released with the affirmative consent of the consumer, although there are some exceptions, most significantly for credit reports requested for purposes related to an ongoing customer relationship, and for purposes where state regulation is preempted by federal law, such as prescreening for credit card solicitations. If a business requests a frozen report, the consumer may choose whether or not to override the freeze and allow access. However, if the consumer chooses to deny access to a report requested in connection with an application, the business may treat the application as incomplete.

L.D. 600 (Public Law Chapter 58) - Save the Health Care System Money by Ensuring Timely Denials of Claims - This law allows a claimant, including a health care provider, to submit simultaneously a claim for payment with all carriers potentially liable for payment of the claim whether primary or secondary. Payment or denial of a claim by each carrier must be made within 30 calendar days after the carrier has received all information needed to pay or deny the claim whether or not another carrier with which it is attempting to coordinate has acted on the claim. Any payment made must be in accordance with rules adopted by the

Superintendent relative to coordination of benefits.

L.D. 634 (Public Law Chapter 428) - Amend the Electronic Insurance Cancellation Notification Law - Amends Title 29-A M.R.S.A. § 1601-A to include a 15-day period for the Secretary of State to reconcile cancellations, terminations or lapses with evidence of insurance for reinstatement of coverage or new coverage before a notification of registration suspension can be issued. Reduces from 30 days to 20 days the time before suspension takes effect after the notification is issued.

Additionally, requires the Secretary of State to accept evidence of insurance by electronic transmittal, the Internet, facsimile, mail, or proof presented at an office of the Bureau of Motor Vehicles. This section of the legislation becomes effective January 1, 2007.

L.D. 685 (Public Law Chapter 111) - Waive Continuing Education Requirements and To Provide an Automatic Extension of a License, Certificate or Registration for Mobilized Military Members - Creates a waiver of continuing education and an automatic extension of a license, certificate or registration for any member of the National Guard or the Reserves of the United States Armed Forces who was licensed, certified or registered to engage in a profession or occupation prior to being called to active duty and is on active duty for a period of more than 30 days. The waiver and extension applies to the period of active duty and for 6 months after that person has been released from active duty.

L.D. 933 (Public Law Chapter 346) - Amend the Maine Life and Health Insurance Guaranty Association Act -

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This law amends the Life and Health Guaranty Association Act to significantly increase the maximum limits of protection available to policyholders in the event of the insolvency of a life or health insurer, to clarify the applicability of the Act to various products and to make other miscellaneous changes.

L.D. 966 (Public Law Chapter 127) - Conform the *Insurance Information and Privacy Protection Act* to Federal Privacy Rules - This law amends the Maine Insurance Information and Privacy Protection Act to clarify that state law does not prohibit communications in the ordinary course of business between a third-party administrator (TPA) and a plan sponsor, to the extent that such communication are conducted in compliance with the federal privacy regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA).

L.D. 1324 (Public Law Chapter 343) - Improve Access to Affordable Prescription Drugs - Establishes the Pharmacy Cost Management Council to develop and implement measures to control the cost of prescription drugs and expand the State's purchasing power. The council is required to provide annual reports to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs by March 1, 2006 and each year thereafter. The meetings of the council and its records are public.

L.D. 1378 (Public Law Chapter 376) - Amend the *Medical Liability Laws Concerning Communications of Sympathy or Benevolence* - In a civil action for professional negligence (medical malpractice) any statement expressing apology or sympathy made

by a health care practitioner or provider to the alleged victim, a relative of the victim of a representative of the victim that relates to the result of the unanticipated medical outcome is inadmissible as evidence of an admission of liability or as evidence of an admission of interest. The law does not prohibit the admissibility of a statement of fault.

L.D. 1411 (Public Law Chapter 391) - Reporting of Hospital and Ambulatory Surgical Center Prices - Requires the Maine Health Data Organization to establish criteria for standardizing how hospitals and ambulatory surgical centers list prices for their most commonly offered services.

L.D. 1499 (Public Law Chapter 121) - Amend the Laws Related to Health Insurance and Confidentiality of Property and Casualty Filings - Makes the following changes to the insurance code:

- Gives employees of employers with fewer than 20 employees who have health coverage through a multiple employer welfare arrangement the same protection currently available to employees of employers with fewer than 20 employees who are covered by insurance carriers. This limited protection allows the employee to stay on the employer's health plan for up to a year only in the event of a workers' compensation claim or a temporary layoff.
- Makes medical insurance issued through credit union groups subject to the same requirements concerning guaranteed issue, rating and rate filing that currently apply to individual health insurance and certain association group health insurance.
- Filings of insurance forms and of

property and casualty rates and supporting data will become public when approved rather than when they take effect.

- Provides that when someone is covered under more than one health insurance policy, payments by the primary insurer must be counted toward the deductible by the secondary insurer.
- Amends the law concerning the guaranteed loss ratio option for small group health insurers to change the minimum threshold for eligibility from 1,000 member months to 1,000 members. This change does not apply to carriers already using this option.
- Amends the law that requires group health carriers to notify policyholders 60 days in advance of any rate increase to specify that the notice must state that the increase is subject to regulatory approval when that is the case.
- Amends the laws concerning guaranteed renewal of health insurance to comply with federal law with respect to coverage through associations.
- Amends the continuity of coverage law to clarify that a waiting period is not counted as a break in coverage nor is it counted as a period of actual coverage except in limited circumstances, consistent with federal law.
- Clarifies the laws concerning categories of mental health providers that must be covered to the same extent as physicians for services within the scope of their licenses. (Note: L.D.s 27 and 28, listed above, expand this list of providers.)

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L.D. 1537 (Public Law Chapter 294) - *Repeal Certain Boards and Commissions* - This law repeals the Consumer Health Care Division Advisory Council.

L.D. 1561 (Resolve Chapter 47) - *Create an Insurance Fraud Unit within the Bureau of Insurance* - This Resolve directs the Bureau of Insurance to study the creation of a fraud unit within the Bureau of Insurance and to report to the Legislature by December 5, 2005.

L.D. 1577 (Public Law Chapter 400) - *Modify the Calculation and Implementation Date of Savings Offset Payments under the Dirigo Health Act* - Makes the following changes to the 2003 Dirigo Health Act:

- Changes from premiums to paid claims the assessment base for savings offset payments required from health insurance carriers and employee benefit excess insurance carriers and establishes paid claims as the assessment base for savings offset payments required from 3rd-party administrators.
- Provides for savings offset payments to apply to claims paid on or after January 1, 2006, 6 months later than in current law, to reflect delays in the implementation of Dirigo Health. It provides an exception to the quarterly savings offset payments for the first 3 months of 2006, during which time monthly savings offset payments, due not less than 60 days after the close of the month, are required for plan years starting during those months. Allows 3rd-party administrators for groups of 500 or fewer members to make savings offset payments annually.
- Specifies that after the first assessment year, rules regarding the

definition of paid claims for the purpose of savings offset payments are major substantive rules requiring approval by the Legislature. During the first assessment year, the rules are routine technical and may be adopted by the Dirigo Board of Directors without legislative approval.

- Establishes a 10-member working group, convened by the Superintendent of Insurance, to advise the Board of Directors of Dirigo Health on certain issues relating to savings offset payments, including (1) the definition of "subsidy," (2) the definition of "paid claims," (3) the methodology for calculating and invoicing paid claims, (4) by September 20, 2005, the board's proposed methodology for calculating aggregate measurable cost savings and (5) by December 31, 2005, a funding strategy for Dirigo Health's administrative expenses. The working group terminates December 31, 2005.
- The Board of Directors of Dirigo Health must file with the Superintendent of Insurance its determination as to the aggregate measurable cost savings. Following a public hearing, the Superintendent must approve, in whole or in part, or disapprove the filing. For the first year, the Board must make its filing by September 17, 2005 and the Superintendent must issue an approval or disapproval by October 29, 2005.
- Temporarily reduces the rate increase notice requirement to small group and individual policyholders to 30 days. Applies only to 2006 renewals.

- Allows for the pooling of savings offset payments with other revenue and clearly states that the calculation of the savings offset payment amount is limited to the amount of funds necessary to provide subsidies and to support the Maine Quality Forum, and that the calculation may not include general administrative expenses of Dirigo Health.
- Specifies that Dirigo Health may use the \$53,000,000 in start-up funds it received in 2003 to cover administrative expenses but may not cover those expenses with savings offset payments. It requires the Board of Directors of Dirigo Health, with input from the working group, to make recommendations to the Joint Standing Committee on Insurance and Financial Services regarding how to finance Dirigo Health's administrative expenses and authorizes the committee to report out a bill after reviewing the board's recommendation.

L.D. 1593 (Public Law Chapter 51) - *Resolve Legislative Review of Portions of Chapter 750: Standardized Health Plans, a Major Substantive Rule of the Department of Professional and Financial Regulation, Bureau of Insurance* - Approves major substantive changes to Insurance Rule Chapter 750, Part II, Product Design Guidelines for HMO Plans. The amendments to Rule 750 permit HMOs to offer high deductible health plans that satisfy federal requirements for policyholders to set up Health Savings Accounts (HSAs).